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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

WMCA, INC., Et Al., - - - - - - - - - - Appellants,
versus No. 20
CAROLINE K. SIMON, Secretary of State, Et Al., - Appellees.

THE MARYLAND COMMITTEE FOR FAIR REPRESENTATION, Et Al., - - - - - - - - - Appellants,
versus No. 29
J. MILLARD TAWES, Governor, Et Al., - - Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR MARYLAND.

B. A. REYNOLDS, Judge of Probate, Et Al., - Appellants,
versus No. 23
M. O. SIMS, Et Al., - - - - - - - - Appellees.

DAVID J. VANN and ROBERT S. VANCE, - Appellants,
versus No. 27
BETTYE FRINK, Secretary of State, Et Al., - Appellees.

JOHN W. McCONNELL, JR., Et Al., - - - Appellants,
versus No. 41
BETTYE FRINK, Secretary of State, Et Al., - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

LEVIN NOCK DAVIS, Secretary, State Board of Elections, Et Al., - - - - - - - - Appellants,
versus No. 69
HARRISON MANN, Et Al., - - - - - - - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR KENNETH A. SCHMIED, PRESIDENT OF THE BOARD OF ALDERMEN OF THE CITY OF LOUISVILLE, KENTUCKY, AMICUS CURIAE IN Nos. 20, 29, 23, 27, 41 and 69.

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IN THE

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October Term, 1963

WMCA, Inc., Et Al., - - - - - - *Appellants*,
v. No. 20
Caroline K. Simon, Secretary of State, Et Al., - - - - - - - - - - *Appellees*.

The Maryland Committee for Fair Representation, Et Al., - - - - *Appellants*,
v. No. 29
J. Millard Tawes, Governor, Et Al., - - *Appellees*.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

B. A. Reynolds, Judge of Probate, Et Al., *Appellants*,
v. No. 23
M. O. Sims, Et Al., - - - - - - - - *Appellees*.

David J. Vann and Robert S. Vance, - *Appellants*,
v. No. 27
Bettye Frink, Secretary of State, Et Al., - *Appellees*.

John W. McConnell, Jr., Et Al., - - *Appellants*,
v. No. 41
Bettye Frink, Secretary of State, Et Al., - *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

Levin Nock Davis, Secretary, State Board of Elections, Et Al., - - - - *Appellants*,
v. No. 69
Harrison Mann, Et Al., - - - - - - *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR KENNETH A. SCHMIED, PRESIDENT OF THE BOARD OF ALDERMEN OF THE CITY OF LOUISVILLE, KENTUCKY, AMICUS CURIAE IN Nos. 20, 29, 23, 27, 41 and 69.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes Kenneth A. Schmied, President of the Board of Aldermen of the City of Louisville, Kentucky, and respectfully files herewith a brief as Amicus Curiae in the above styled action.

JURISDICTION

The City of Louisville, Kentucky, is a duly constituted political sub-division of the Commonwealth of Kentucky, and Kenneth A. Schmied is a duly elected member of the Board of Aldermen of said City, and was elected President of said Board of Aldermen and he files this Brief Amicus Curiae pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States.

STATEMENT OF INTEREST OF AMICUS CURIAE

The City of Louisville, acting by and through the President of the Board of Aldermen, Kenneth A. Schmied, filed an Action in the United States District Court for the Western District of Kentucky in June of 1962, Action No. CA 4380. This Action came on to be heard on December 13, 1962, and the hearing was treated as a Pre-trial Conference, at which time the Defendant, Bert T. Combs, Governor of the Commonwealth of Kentucky, announced to the Court that he recognized the need for reapportionment of the General Assembly of the Commonwealth of Kentucky and

acknowledged all the facts alleged in the Complaint and Amended Complaint of the Plaintiff.

On the 28th day of January, 1963, the General Assembly of the Commonwealth of Kentucky was called into extraordinary session for the purpose of reapportioning said General Assembly. The General Assembly did pass a reapportionment Bill which was signed into law by the Governor, however, it is the belief of Kenneth A. Schmied that said General Assembly did not apportion itself fairly as required by the Constitution of the Commonwealth of Kentucky and by the Fourteenth Amendment of the Constitution of the United States and that there exists invidious discrimination against the County of Jefferson and the City of Louisville.

This Honorable Court has now six cases pending before it on appeal from final judgments from three-judge federal district courts sitting in several states. All of these cases are outgrowths of the now famous case of *Baker* v. *Carr*, 369 U. S. 186, 7 L. Ed. 8d 663, 82 S. Ct. 691. This Brief is filed before this Court to point out the necessity for fixing certain yardsticks and guide lines for the various state legislatures concerning the manner in which reapportionment must be carried out. To leave the manner to the various legislatures would result in a "crazy quilt" pattern having no uniformity at all and as one writer has described reapportionment without standards or yardsticks is like "do it yourself surgery which is painful and apt to be done badly." It is most imperative that

the legislatures of the several states have guide lines by which to reapportion themselves because without guide lines and if the job is done badly or inadequately usually you must wait at least two years to correct this matter which necessitates four years before the overall matter can be corrected and the area discriminated against can have its proper representation.. In Kentucky the job done by the General Assembly is not bad when compared to many of the states. The extreme variances between the largest and the smaller districts have disappeared but there still exist a large degree of disparity between the rural and urban votes which is far more than ere should be if the districts were made "as nearly equal as possible" which is a requirement of the Kentucky Constitution, Section 33. There still exists variances of better than two to one. Counsel in the case of *Schmied* v. *Combs* requested that the District Court lay down guide lines for the General Assembly. This, the Court declined to do, stating "* * * the legislature does not need to be guided, they need to know that if they don't do it properly, fairly in making this reapportionment that it will not be effective * * *." The General Assembly did not give full consideration and representation to the County of Jefferson in which the City of Louisville is situated and the effect of this delay is causing further frustration on the part of a large portion of the population of the Commonwealth. To illustrate the point, legislators are elected in 1963. They take office in January of 1964. The earliest time by which we can now reapportion and get the full

benefit of this representation would be at the next regular session which is in 1966 or just four years prior to the next census. This Amicus Curiae respectfully asks this Court to require that the various district courts lay down yardsticks by which reapportionment shall be accomplished and to require these legislatures to use the latest possible figures and best information available as to population. An illustration of the reason requesting this is that the 1960 Census showed the population of Kentucky at 3,038,156 and the population of Jefferson County at 610,947 or 20% of the population of the Commonwealth. A bill was introduced at the Special Session of the General Assembly calling for 20 seats in the House and 8 seats in the Senate, the House being made up of 100 seats and the Senate 38. At the time the General Assembly convened the figures computed by the University of Kentucky showed that Jefferson County had increased in population of over 640,000, thus, entitling it to 21 and possibly 22 seats and that other counties were continuing to lose population almost daily. However, Jefferson County was awarded only 17 seats in the House and only 7 seats in the Senate.

ARGUMENT.

The failure of the General Assembly of the Commonwealth of Kentucky to reapportion itself properly to as "nearly equal as possible" legislative and senatorial districts pursuant to the requirements of the Kentucky Constitution and the Fourteenth Amendment of the United States Constitution has continued to deny the urban citizens of the Commonwealth adequate representation. The Kentucky Constitution requires that the State shall be reapportioned every 10 years. Kentucky was reapportioned in 1942 and until 1963 there had been no other apportionment. Since 1942 there have been tremendous and highly significant shifts of population within the State; and these shifts are continuing to this very minute. By shifting population, this means that many counties in Kentucky are rapidly losing population while others are growing rapidly and we recognize this is not only true of Kentucky, but many other states. This situation is evidenced beyond any doubt by looking at the graph showing the comparative size of the districts which is in the Appendix (Exhibits 2 and 3); which shows that the House seats alloted to Jefferson County are with one exception the largest district in the State. This is a great deal of under-representation not only in one, but in each and every district. The one exception to this is the County of Hopkins, which is District Number 10, which has a population of 38,600; wherein the ideal district would be 30,382, the rea-

son being that Hopkins County is not large enough for two districts and just a little too large for one. The Kentucky Constitution has a provision in it against the splitting of counties. Legislation was introduced in the 1963 Special Session of the General Assembly which was much more nearly equal than this (Appendix, Exhibits 4 and 5). It is believed that equality of representation is exactly what it says and there can be no substitute, no half-way equality of representation and no deviation from the principle recognizing of course, that we cannot achieve mathematical exactness, but that we should strive to do the next best thing to that in order that each person's vote may be weighed the same. We believe it would be of little use to go into the arguments in favor of reapportionment since they have been clearly outlined many times by able counsel and the Court is cognizant of these arguments and cognizant of the results when equal representation is not allowed. However, to the legislator, to the chief executive of the state, to the various urban areas and citizens therein, there must be some guide lines to allow the legislature to know whether it is functioning properly and apportioning properly and establish once and for all and clearly, a legislature's duty and role and what cities and individuals are entitled to in the way of representation if for no other reason than to keep down a multiplicity of suits. For the mere mention of reapportionment in a legislative body creates an explosive situation so that the urban area which is seeking to force reapportionment is very possibly not apt to fare well at the hands of the General Assembly of

that particular state in terms of needed legislation, appropriations and all the other considerations that come before that body. This in turn follows through to deny the urban areas many things that they need and need desperately in these days of the population explosion and often they cannot wait until the next session of the General Assembly, particularly, where most legislative bodies of states meet only every other year. Thus, one of man's most sacred rights, the right of equal representation becomes nothing more than a saying or a half truth and human nature being what it is, the attitude of the legislatures concerning reapportionment will be "let's see how little we can change and get by with" by further slowing down the needed reapportionment which will continue from time to time. Our system of government, which provides that the government acquires its rights from the consent of the governed, cannot function effectively if the people cannot give their consent freely when they are denied the means of true equality to elect those who represent their wishes.

The General Assemblies of the Legislatures of the Various States Should Use the Best Available Evidence as to Population of the Various Districts and Counties Within the State.

The 1960 Census figures would not seem to be the best evidence to use in reapportionment which would be carried out in 1964, 1966 or 1968 as these would clearly not show the loss and gains of population

within the districts and counties of the state, therefore, the people do not have the means of equality in the election of their representatives in their state government.

CONCLUSION.

The situation in Kentucky has been presented to this Honorable Court because of its analogy to the situations presented in the several cases now before this Court. The facts have been set out in order to illustrate the situation is not restricted to the several states whose cases are before this Honorable Court and to respectfully request that any opinion of this Court should be far reaching enough to remedy the situation in all of the several states by establishing yardsticks and guide lines for the various legislatures.

Respectfully submitted,

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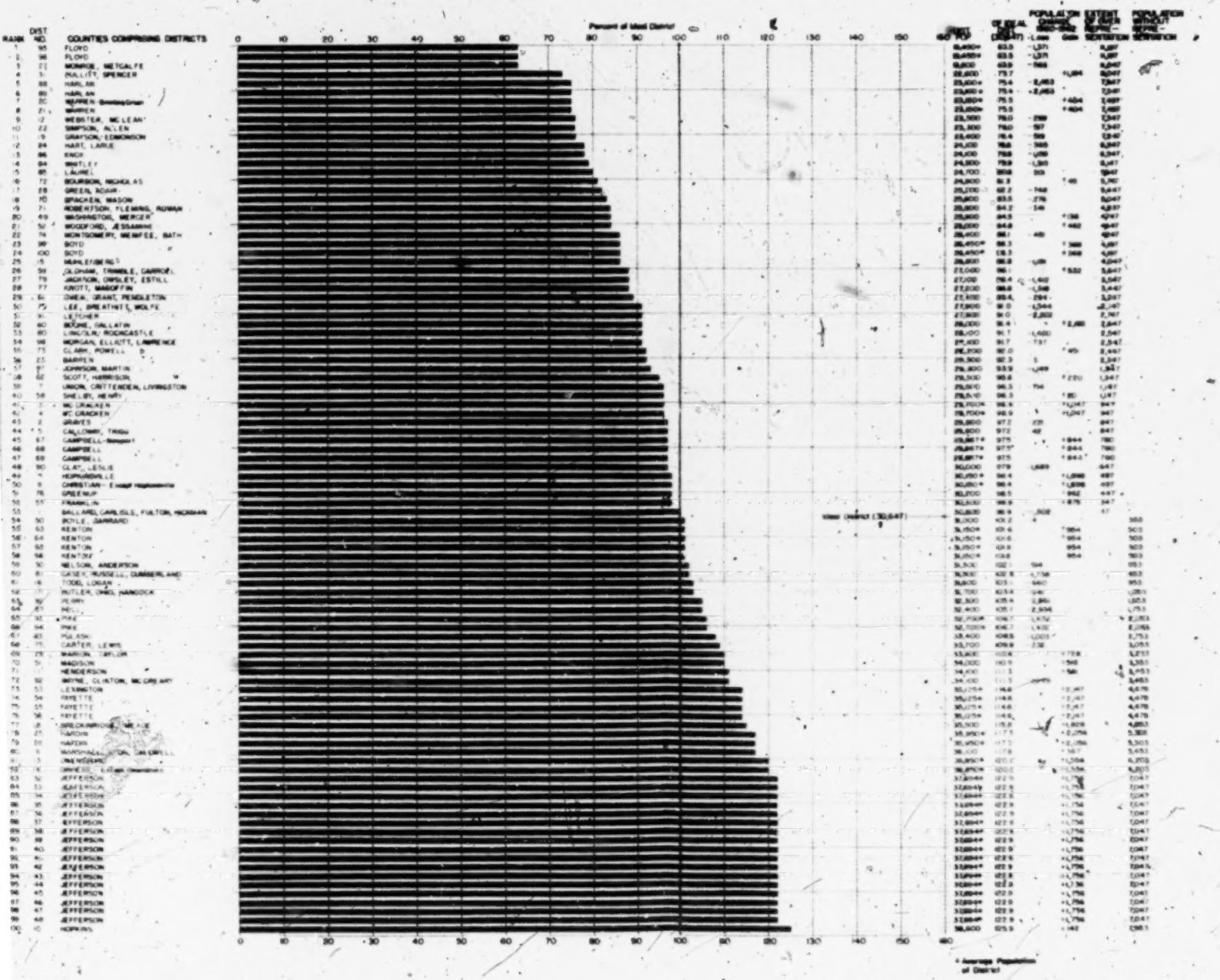
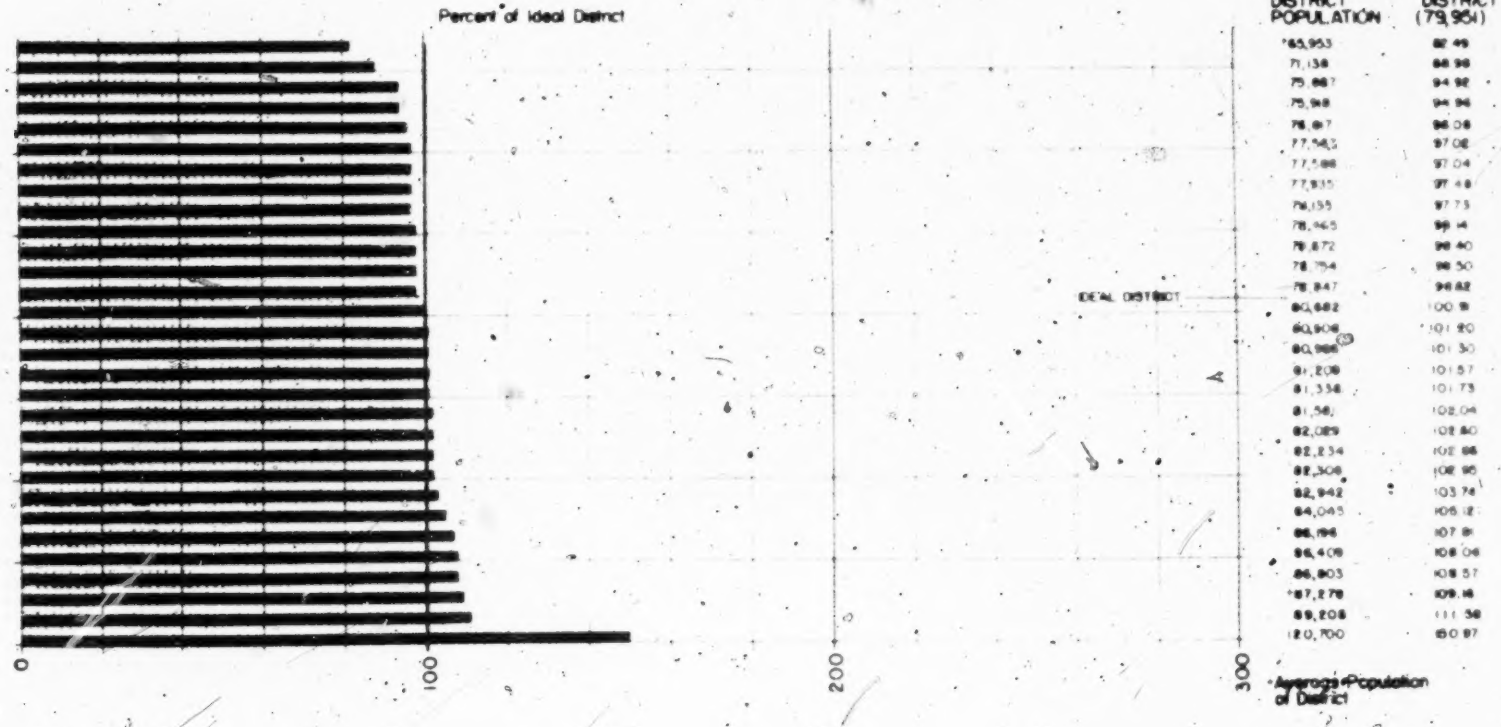
HOUSE OF REPRESENTATIVE DISTRICTS OF THE GENERAL ASSEMBLY OF KENTUCKY UNDER HOUSE BILL NO. 3 AS AMENDED 1 ST. EXTRAORDINARY SESSION OF 1963 RANKED ACCORDING TO 1962 POPULATION (UNIVERSITY OF KENTUCKY ESTIMATED FIGURES)

COMPARING THE DISTRICTS AND DEVIATION FROM IDEAL REPRESENTATIVE DISTRICTS AND GAIN OR LOSS FROM 1960 TO 1962



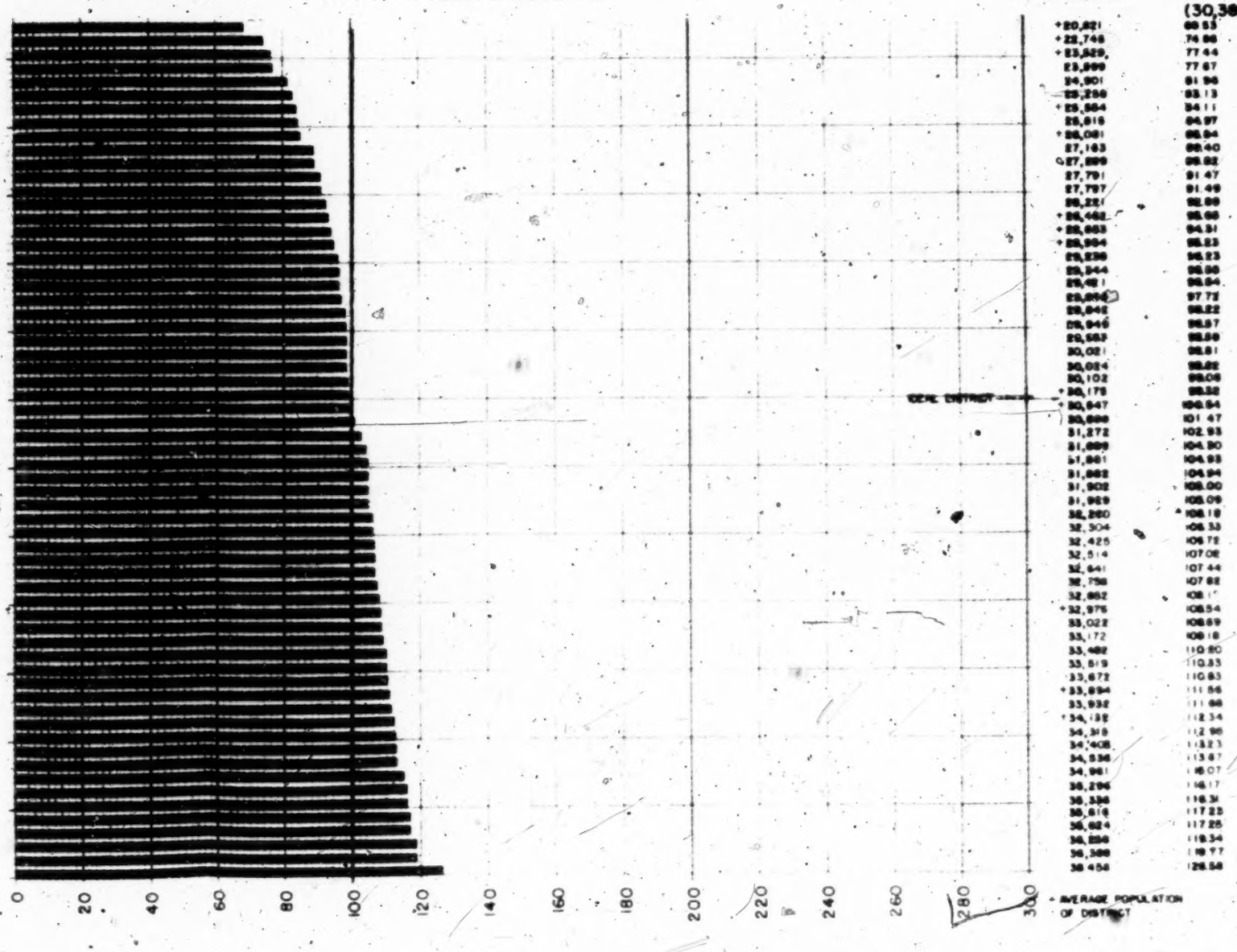
PROPOSED SENATORIAL DISTRICTS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY BASED UPON THE 1960 CENSUS ENUMERATION

RANK	DISTRICT NO	COUNTIES COMPRISING DISTRICTS	TOTAL DISTRICT POPULATION	PERCENT OF IDEAL DISTRICT (79,954)
1	29-30	FAYETTE	*85,953	82.49
2	19	BOYLE, GARRARD, MERCER, JESSAMINE, WOODFORD	71,138	88.98
3	4	CRITTENDEN, WEBSTER, HOPKINS, UNION	75,887	94.92
4	6	DAVIESS, HANCOCK	75,948	94.96
5	7	BUTLER, OHIO, GRAYSON, BRECKINRIDGE, MEADE	78,817	98.08
6	13	CASEY, PULASKI, ROCKCASTLE, LINCOLN	77,543	97.02
7	15	ANDERSON, FRANKLIN, SCOTT, SHELBY, SPENCER	77,588	97.04
8	8	LOGAN, WARREN, SIMPSON	77,935	97.48
9	10	HARDIN, LARUE	78,155	97.75
10	38	MARTIN, PIKE	78,965	98.14
11	27	PENDLETON, BRACKEN, MASON, HARRISON, NICHOLAS, ROBERTSON, FLEMING, BATH	79,872	98.40
12	34	LESLIE, PERRY, KNOTT, BREATHITT	78,754	98.50
13	5	CHRISTIAN, TRIGG, CALDWELL	78,847	98.62
14	2	GRAVES, CALLOWAY, MARSHALL, LIVINGSTON, LYON	80,682	100.9
15	12	GREEN, ADAIR, RUSSELL, CUMBERLAND, CLINTON, WAYNE, MC CREARY	80,908	101.20
16	24	GRANT, BOONE, CARROLL, GALLATIN, HENRY, OLDHAM, OWEN, TRIMBLE	80,988	101.30
17	33	HARLAN, LETCHER	81,209	101.57
18	35	FLOYD, WAROFFIN, MORGAN, WOLFE, MENIFEE, POWELL	81,358	101.73
19	31	LAUREL, CLAY, JACKSON, OWSLEY, LEE, ESTILL	81,581	102.04
20	5	HENDERSON, MC LEAN, MUHLENBERG, TODD	82,089	102.60
21	11	BULLITT, NELSON, WASHINGTON, MARION, TAYLOR	82,234	102.88
22	36	LEWIS, BREATHITT, CARTER, ELLIOTT, ROWAN	82,308	102.95
23	9	ALLEN, BARREN, MONROE, METCALF, HART, EDMONSON	82,942	103.74
24	37	BOYD, LAWRENCE, JOHNSON	84,045	105.12
25	28	MADISON, CLARK, BOURBON, MONTGOMERY	86,196	107.81
26	32	WHITLEY, BELL, KNOX	86,408	108.06
27	26	CAMPBELL	86,803	108.57
28	16-17	JEFFERSON	*87,278	109.16
29	1	FULTON, HICKMAN, CARLISLE, BALLARD, MC CRACKEN	89,208	111.58
30	25	KENTON	120,700	150.97



PROPOSED REPRESENTATIVE DISTRICTS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY BASED UPON THE 1960 CENSUS ENUMERATION

RANK	DISTRICT NO	COUNTIES COMPRISING DISTRICTS	TOTAL DISTRICT POPULATION	PERCENT OF IDEAL DISTRICT (30,382)
1	100-91	FLOYD	+20,821	68.53
2	90-81	WARREN	+22,748	74.86
3	13-16	DAVIESS	+23,529,	77.44
4	11	WEBSTER, MC LEAN	23,599	77.67
5	81	LAUREL	24,901	81.96
6	83	KNOX	25,256	83.13
7	88-96	HARLAN	+25,554	84.11
8	82	WHITLEY	25,815	84.97
9	98-97	BOYD	+26,081	85.84
10	83	WAYNE, MC CREARY	27,183	89.40
11	98	SCOTT, WOODFORD	27,899	91.82
12	17	MUHLENBERG	27,791	91.47
13	92	CUMBERLAND, CLINTON, RUSSELL	27,797	91.49
14	97	MERCER, JESSAMINE	28,221	92.89
15	7-8	CHRISTIAN	+28,482	93.75
16	3-4	MC CRACKEN	+28,683	94.31
17	87-89	CAMPBELL	+28,954	95.23
18	96	GREENUP	29,238	96.23
19	100	MASON, FLEMING	29,344	96.58
20	89	FRANKLIN	29,481	97.04
21	9	MARSHALL, LIVINGSTON, LYON	29,696	97.72
22	8	CALLOWAY, TRIGG	29,848	98.22
23	94	JOHNSON, MARTIN	29,945	98.57
24	23	GRAYSON, HART	29,953	98.59
25	2	GRAVES	30,021	98.81
26	47	BALLITT, SPENCER, ANDERSON	30,054	98.92
27	87	LETCHER	30,102	99.08
28	89-86	KENTON	+30,178	99.33
29	27-46	JEFFERSON	+30,847	100.54
30	85	LINCOLN, CASEY	30,899	101.47
31	95	ROWAN, ELLIOTT, LAWRENCE	31,272	102.93
32	80	LESLIE, CLAY	31,699	104.30
33	60	SHELBY, OLDHAM	31,861	104.93
34	71	BOURBON, HARRISON	31,882	104.94
35	1	FULTON, HICKMAN, BALLARD, CARLISLE	31,902	105.00
36	79	ESTILL, LEE, OWSLEY, POWELL	31,989	105.09
37	10	TODD, LOGAN	32,260	106.18
38	81	TRIMBLE, HENRY, CARROLL, OWEN	32,304	106.33
39	49	HARRISON, BOYLE	32,425	106.73
40	48	TAYLOR, LARUE	32,514	107.08
41	18	HANCOCK, OHIO, BUTLER	32,641	107.44
42	86	GARRARD, ROCKCASTLE, JACKSON	32,758	107.82
43	89	KNOTT, BREATHITT	32,862	108.17
44	75-76	FAYETTE	+32,975	108.54
45	77	WOLFE, BREATHITT, MORGAN, MAGOFFIN	33,022	108.69
46	50	MARION, TAYLOR	33,172	109.18
47	78	MADISON	33,482	110.20
48	12	HENDERSON	33,519	110.33
49	24	BRECKINRIDGE, MEADE	33,672	110.83
50	28-26	NELSON	+33,894	111.56
51	99	CARTER, LEWIS	33,932	111.68
52	92-93	PIKE	+34,132	112.34
53	91	GREEN, ADAIR, METCALFE	34,318	112.96
54	84	PULASKI	34,408	113.23
55	76	CLARK, MONTGOMERY	34,536	113.67
56	88	PERRY	34,981	115.07
57	82	BOONE, GRANT, GALLATIN	35,296	116.17
58	84	BELL	35,336	116.31
59	19	SIMPSON, ALLEN, MONROE	35,616	117.23
60	70	PENDLETON, BRACKEN, ROBERTSON, NICHOLAS, BATH	35,624	117.25
61	9	UNION, CRITTENDEN, CALDWELL	35,836	118.34
62	22	BARREN, EDMONSON	35,388	116.97
63	10	HOPKINS	38,454	126.58



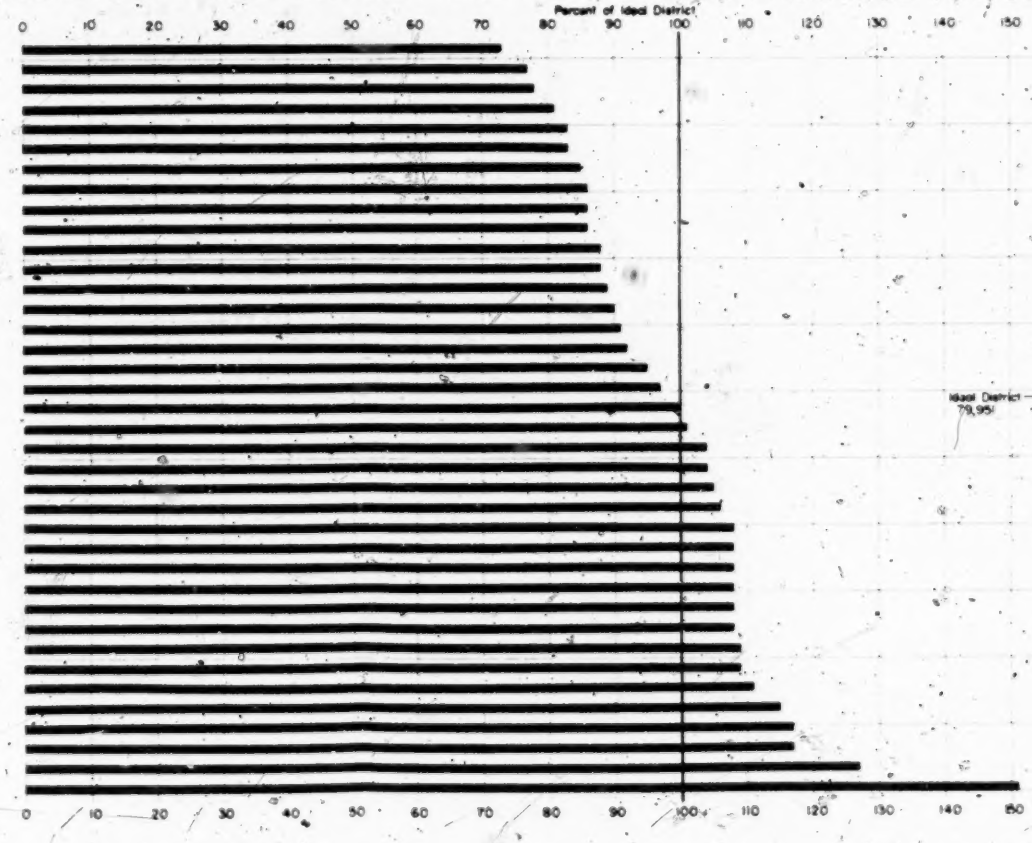
SENATORIAL DISTRICTS OF THE GENERAL ASSEMBLY OF KENTUCKY

UNDER HOUSE BILL NO. 4 AS AMENDED — 1 ST. EXTRAORDINARY SESSION OF 1963

RANKED ACCORDING TO 1960 POPULATION (FEDERAL CENSUS ENUMERATION) FIGURES

COMPARING THE DISTRICTS AND DEVIATION FROM IDEAL SENATORIAL DISTRICT AND GAIN OR LOSS FROM 1950 TO 1960

RANK	DIST. NO.	COUNTIES COMPRISING DISTRICTS	DIST POP	PERCENT OF IDEAL DIST (79,951)	POPULATION CHANGE 1950 – 1960 Loss	Gain	EXTENT OF OVER REPRE-SENTATION	POPULATION WITHOUT REPRE-SENTATION
1	21	LESLIE, HARLAN	62,048	77.6	-25,240		17,903	
2	13	FAYETTE-LEXINGTON	62,810	78.6		+15,959	17,141	
3	23	LETCHER, PERRY	65,083	81.4	-2,025		14,888	
4	27	MASON, FLEMING, BATH, MORGAN, MENIFEE, ROWAN	65,598	83.3	-5,380		14,353	
5	6	LYON, CALDWELL, HOPKINS, MC LEAN	66,810	83.6	-2,078		13,141	
6	30	PENDLETON, BRACKEN, ROBERTSON, HARRISON, NICHOLAS, BOURBON, GRANT	67,881	84.9	-1,863		12,070	
7	5	PIKE	68,264	85.4	-12,890		11,687	
8	12	FAYETTE	69,096	86.4		+15,987*	10,855	
9	29	MARTIN, FLOYD, KNOTT	69,205	86.6	-16,292		10,746	
10	18	LEWIS, CARTER, GREENUP, ELLIOTT	69,500	86.9		+1,449	10,451	
11	1	CARLISLE, HICKMAN, FULTON, GRAVES, MARSHALL	70,368	88.0	-2,035		9,583	
12	4	HENDERSON, UNION, WEBSTER, CRITTENDEN	70,948	88.7	-1,033		9,003	
13	26	OLDHAM, HENRY, OWEN, TRIMBLE, CARROLL, GALLATIN, BOONE	71,452	89.4		+8,683*	8,452	
14	2	BALLARD, MC CRACKEN, LIVINGSTON	72,826	90.8		+7,760	7,329	
15	9	LARUE, HART, BARREN, METCALFE, ALLEN	73,404	91.8	-3,877		6,547	
16	19	ROCKCASTLE, JACKSON, OWSLEY, LAUREL, CLAY	74,029	92.6	-5,234		5,922	
17	8	DAVIESS, ANCOCA	75,918	95.0		+12,888	4,033	
18	20	SHELBY, SPENCER, ANDERSON, FRANKLIN, SCOTT	77,588	97.0		+3,481	2,363	
		Ideal District 79,951						
19	16	MONROE, CUMBERLAND, CLINTON, RUSSELL, ADAIR, GREEN, TAYLOR	80,244	100.4	-12,496			293
20	5	MUHLENBERG, TODD, LOGAN, SIMPSON, BUTLER	81,185	101.5	-9,508			1,234
21	38	JEFFERSON	83,125	104.0		+17,309*		3,174
22	22	MADISON, GARRARD, JESSAMINE, MERCER, WOODFORD	83,363	104.3		+2,842		3,412
23	25	BOYD, LAWRENCE, JOHNSON	84,045	105.1	-4,468			4,094
24	37	JEFFERSON	85,249	106.6		+7,826*		5,298*
25	17	WHITLEY, KNOX, BELL	86,409	108.1	-23,342			6,458
26	10	MEADE, HARDIN	86,727	108.5		+26,993		6,776
27	31	CALLOWAY, TRIGG, CHRISTIAN	86,746	108.5		+14,587		6,795
28	11	CAMPBELL	86,803	108.6		+10,607		6,852
29	36	JEFFERSON	86,931	108.7		+17,976*		6,980
30	35	JEFFERSON	87,075	108.9		+18,005*		7,124
31	14	BULLITT, NELSON, WASHINGTON, MARION, BOYLE	87,206	109.1		+5,815		7,255
32	34	JEFFERSON	87,634	109.6		+9,121*		7,683
33	7	JEFFERSON	88,826	111.1		+18,337		8,875
34	33	JEFFERSON	92,117	115.2		+19,048*		12,166
35	15	MC CREARY, PULASKI, LINCOLN, CASEY, TAYLOR	93,961	117.5	-11,648			14,010
36	28	MONTGOMERY, POWELL, ESTILL, LEE, BREATHITT, WOLFE, MAGOFFIN, CLARK	94,274	117.9	-9,293			14,323
37	32	OHIO, GRAYSON, EDMONSON, WARREN, BRECKINRIDGE	101,869	127.4		+14,504		21,918
38	24	KENTON	120,700	151.0		+18,446		40,749



*Estimated Population